

TFC Contract No. 17-002-000
J. T. Vaughn Construction, LLC
Amendment No. 6
Project No. 16-002-5191
RFQ No. 303-6-01590, PO 303-6-7025

**AMENDMENT NO. 6
TO
CONSTRUCTION MANAGER-AT-RISK CONTRACT
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
J. T. VAUGHN CONSTRUCTION, LLC**

The Texas Facilities Commission (hereinafter referred to as "TFC"), a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701, as Owner (as defined in UGC Section 1.28) and J. T. Vaughn Construction, LLC (hereinafter referred to as "CMR"), located at 3920 North Interstate 35, Austin, Texas 78751 (hereinafter referred to collectively as the "Parties"), enter into the following *Amendment No. 6 to the Construction Manager-at-Risk Contract between the Texas Facilities Commission and J. T. Vaughn Construction, LLC* (hereinafter referred to as the "Amendment No. 6"), as amended.

WHEREAS, on September 9, 2016, the Parties entered into that one certain *Construction Manager-at-Risk Contract Between the Texas Facilities Commission and J. T. Vaughn Construction, LLC* (hereinafter referred to as the "Contract"); and

WHEREAS, on October 26, 2017, and on August 21, 2018, the Parties executed Amendment No. 1, and Amendment No. 2, respectively, for the purpose of providing additional Construction Management Services; and

WHEREAS, on April 30, 2019, the Parties entered into Amendment No. 3 in order to provide for funding of additional Construction Management Services to be performed at the State Finance Commission Building; and

WHEREAS, on October 9, 2019, the Parties entered into Amendment No. 4, reducing the Cost of Work and Construction Management Fee, and modifying and adding certain Contract provisions, terms and conditions adopted subsequent to the execution of the Contract and Amendments 1, 2, and 3, inclusive; and

WHEREAS, on November 20, 2019, the Parties entered into Amendment No. 5 in order to provide for additional funding for elevator replacement services; and

WHEREAS, the Parties now desire to enter into this Amendment No. 6 to provide for additional funding by increasing the Contract Sum and TFC Controlled Contingency in the amount of Four Hundred Fifty-Nine Thousand Eight Hundred Eighty-Two and No/100 Dollars (\$459,882.00) for the purpose of completing GMP No. 6 and adding certain Contract provisions;

NOW, THEREFORE, the Parties agree to amend the Contract, as amended, as follows:

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1. Unless clearly provided otherwise herein, all terms and phrases in initial caps herein shall have the same meaning as the terms and phrases with initial caps in the Contract.
2. The Parties hereby agree to amend ARTICLE IV – CONSIDERATION, SECTION 4.2 – Contract Sum-Components, by reflecting an increase in compensation in the amount of Four Hundred Fifty-Nine Thousand Eight Hundred Eighty-Two and No/100 Dollars (\$459,882.00), thus increasing the Contract Sum from Sixteen Million Six Hundred Forty-Six Thousand Eight Hundred and No/100 Dollars (\$16,646,800.00), to a new total amount not to exceed Seventeen Million One Hundred Six Thousand Six Hundred Eighty-Two and No/100 Dollars (\$17,106,682.00), which is the sum of the components indicated in sections 4.2.1 through 4.2.6, reflecting the additional funding to be added to the TFC Controlled Contingency.
3. The Parties hereby agree to further modify ARTICLE IV – CONSIDERATION, SECTION 4.2 – Contract Sum-Components, so that it reads in its entirety as follows:

“4.2. Contract Sum-Components. Upon execution of a GMP Acceptance, the Contract Sum shall not exceed Seventeen Million One Hundred Six Thousand Six Hundred Eighty-Two and No/100 Dollars (\$17,106,682.00), which is the sum of the following components.

4.2.1. Pre-Construction Management Fee. The Pre-Construction Management Fee as indicated in Section 4.1, above, not to exceed Thirty-Seven Thousand One Hundred Twenty-Three and No/100 Dollars (\$37,123.00).

4.2.2. Construction Management Fee. The Construction Management Fee not to exceed three and three quarter’s percent (3.75%) of the Cost of Work, which sum shall not exceed Four Hundred Fifty-Two Thousand Four Hundred Thirty-Eight and No/100 Dollars (\$452,438.00) and will be finalized as part of the Contract Sum in the GMP Acceptance.

4.2.3. General Conditions Fee. The General Conditions Fee not to exceed One Million Seven Hundred Twenty-Six Thousand Two Hundred Thirty-Eight and No/100 Dollars (\$1,726,238.00), which sum will be finalized as part of the Contract Sum in the GMP Acceptance.

4.2.4. Cost of Work. The Cost of Work will be adjusted and finalized as part of the Contract Sum in the GMP. The budget for the Cost of Work shall not exceed Twelve Million Sixty-Five Thousand Four and No/100 Dollars (\$12,065,004.00).

4.2.5. TFC Controlled Contingency. The TFC Controlled Contingency of Two Million Eight Hundred Twenty-Five Thousand Eight Hundred Seventy-Nine and No/100 Dollars (\$2,825,879.00), which sum shall be maintained through construction, and included in the Contract Sum and finalized in the GMP Acceptance.

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4.2.6. Unused Contingencies. Any unused portion of the CMR Contingency and the TFC Controlled Contingency shall be returned to TFC at the completion of the Project through a credit Change Order to the Contract Sum.”

4. The Parties agree to modify ARTICLE VI – ACKNOWLEDGEMENTS, COVENANTS, AND AGREEMENTS, Section 6.2 Acknowledgements, Covenants, and Agreements of CMR, by adding Subsections 6.2.18 Human Trafficking Prohibition and 6.2.19 Use of State Property, as follows:

“6.2.18. Human Trafficking Prohibition. Pursuant to Section 2155.0061 of the Texas Government Code, CMR certifies that it is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if CMR certification in this matter is inaccurate. TFC may not award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year (5) period preceding the date of the award, has been convicted of any offense related to the direct support or promotion of human trafficking.

6.2.19. Use of State Property. CMR is prohibited from using State Property for any purpose other than performing services authorized under the Contract. State Property includes, but is not limited to: TFC’s office space, identification badges, TFC information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any TFC issued software, and the TFC Virtual Private Network (VPN client)), and any other resources of TFC. CMR shall not remove State Property from the continental United States. In addition, CMR may not use any computing device to access TFC’s network or e-mail while outside of the continental United States. CMR shall not perform any maintenance services on State Property unless the agreement expressly authorizes such services. During the time that State Property is in the possession of CMR, CMR shall be responsible for (i) all repair and replacement charges incurred by TFC that are associated with loss of State Property or damage beyond normal wear and tear; and (ii) all charges attributable to CMR’s use of State Property that exceeds the scope of the Contract. CMR shall fully reimburse such charges to TFC within ten (10) calendar days of CMR’s receipt of TFC’s notice of amount due. Use of State Property for a purpose not authorized by agreement shall constitute breach of contract and may result in termination of the agreement and the pursuit of other remedies available to TFC under contract, at law, or in equity.

5. The Parties agree to modify ARTICLE X – RECORDS, AUDIT, PROPRIETARY INFORMATION, AND PUBLIC DISCLOSURE, by adding Section 10.8 Cybersecurity Training Required, as follows:

“10.8 Cybersecurity Training Required. If CMR has “access,” as that term is defined in 1 Tex. Admin. Code § 202.1, to any state computer system or database, then, pursuant to Tex. Gov’t Code § 2054.5192, CMR and its subcontractors, officers, and employees shall complete a cybersecurity training program certified under Tex. Gov’t Code §2054.519. The cybersecurity training program must be completed by the CMR and its subcontractors, officers and employees

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during the term and any renewal period of the Contract. CMR shall verify completion of the training program to TFC pursuant to, and in accordance with, Tex. Gov't Code § 2054.5192.”

6. Except as expressly amended above, the Contract remains in full force and effect.
IN WITNESS WHEREOF, the parties hereto have made and executed this Amendment No. 6 to be effective as of the date of the last Party to sign.

TEXAS FACILITIES COMMISSION

By: DocuSigned by:
Mike Novak
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Mike Novak

Executive Director

Date of execution: 03/20/2020 | 3:48 PM CDT

GC 

Dir 

DED 

J. T. VAUGHN CONSTRUCTION, LLC

By: DocuSigned by:
J. Thomas Vaughn
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J. Thomas Vaughn

Chief Executive Officer

Date of execution: 03/20/2020 | 1:54 PM CDT